

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL  
DISTRICT AND CALIFORNIA  
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2013061090

ORDER GRANTING IN PART, AND  
DENYING IN PART, MOTIONS TO  
DISMISS AND DENYING MOTION  
TO SUBSTITUTE PARTIES OR  
AMEND

On June 25, 2013, Student filed a Request for Due Process Hearing (complaint) naming four respondents: Inglewood Unified School District (IUSD); Tom Torlakson “in his official capacity as the California State Superintendent of Public Instruction;” La Tanya Kirk-Carter “in her official capacity as the Interim State Administrator of Inglewood Unified School District;” and the California Department of Education (CDE).<sup>1</sup>

The complaint alleged that Student resided within IUSD at all relevant times. The complaint alleged that on September 14, 2012, Governor Jerry Brown signed into law an emergency apportionment to IUSD, pursuant to which IUSD’s governing board serves only as an advisory board, but has no rights, powers or duties. With regard to Mr. Torlakson, the complaint alleged that the California State Superintendent of Public Instruction assumed all legal rights, powers and duties of IUSD’s governing board by operation of law when IUSD was given emergency assistance. With regard to La Tanya Kirk-Carter, the complaint alleged that she is the Interim State Administrator appointed by Mr. Torlakson to serve as Interim Administrator of IUSD, to act on Mr. Torlakson’s behalf. With regard to CDE, the complaint alleged that it is the public agency that is ultimately responsible to oversee public schools in the state of California, and is ultimately responsible to ensure that every student receives an appropriate educational program.

On July 2, 2013, CDE filed a Motion to Dismiss itself and Mr. Torlakson as parties, arguing that the intent of the emergency apportionment was not to impose the liabilities of IUSD onto CDE or the State Superintendent of Public Instruction. Secondly, CDE argued that Mr. Torlakson is not a proper party, in that naming him in his official capacity was

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<sup>1</sup> The complaint, in pertinent part, alleged as Issue 3, that all respondents failed during the 2011-2012 and 2012-2013 school years, to offer Student an appropriate educational program and related services. It stated as Issue 4 that Student was entitled to a remedy for those denials of a free appropriate public education (FAPE). Issues 1 and 2, which asked for an expedited hearing, relating to disciplinary issues, have been withdrawn and dismissed.

merely another way of naming the agency of which he is an officer or agent, namely CDE itself.

On July 5, 2013, IUSD filed a Motion to Dismiss Ms. Kirk-Carter, arguing that she is not a public agency over whom OAH has jurisdiction, and secondarily arguing that she is, in any case, no longer serving in the capacity of Interim State Administrator of IUSD.

On July 9, 2013, Student opposed CDE's Motion to Dismiss, arguing that Mr. Torlakson and CDE bore the responsibility to provide Student with a FAPE from and after the date of the emergency apportionment. On July 9, 2013, CDE filed a reply to Student's opposition. On July 10, 2013, Student opposed IUSD's motion to dismiss Ms. Kirk-Carter, arguing that she bore the responsibility to provide Student with a FAPE from and after the date of the emergency apportionment.

On July 10, 2013, Student filed a "Notice of Substitution of Parties and Alternative Request for Leave to Amend and Motion to Amend," seeking to substitute a new respondent, Dr. Donn Braun, for Ms. Kirk-Carter, on the grounds that Dr. Braun had replaced Ms. Kirk-Carter as Interim State Administrator for IUSD. On July 12, IUSD opposed, restating its argument that OAH has jurisdiction over agencies, not individuals.

## APPLICABLE LAW

Title 2, Division 2 of the Education Code delineates the entities that administer education at the state level. They consist of the State Board of Education (Ed. Code, § 33000 et seq.), the CDE (Ed. Code, § 33300 et seq.), the Superintendent of Public Instruction (Ed. Code, § 33100 et seq.), and state educational commissions and committees (Ed. Code, § 33500 et seq.). The Superintendent of Public Instruction is an elected official, voted on at each gubernatorial election. (Cal. Const. art. IX, § 2.) CDE is administered through a Director of Education in whom all executive and administrative functions of the department are vested. (Ed. Code, §33302.) The Superintendent of Public Instruction is the "ex officio" Director of Education. (Ed. Code, §33303.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).)

A "public agency" is defined under California law as "a school district, county office of education, special education local plan area, . . . or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) The Code of Federal Regulations provides that the term "public agency" includes state educational agencies (SEAs), local educational agencies (LEAs), "and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. § 300.33 (2006).)

Under California law, the public agency responsible for providing education to a child between the ages of six and 18 generally is the school district in which the child's parent or legal guardian resides. (Ed. Code, § 48200).

Under the Individuals with Disabilities Education Act (IDEA), an SEA such as CDE is responsible for "general supervision" of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1412(a)(11)(A).) CDE generally is not a party in a due process proceeding because an LEA – a school district or county office of education – not the CDE, is in most instances the public agency that is responsible for providing special education services, and "involved in any decisions regarding [the] pupil." (Ed. Code, § 56501, subd. (a).)

As an exception to this general rule, CDE may be responsible for providing special education, by default, if under the applicable circumstances it is otherwise impossible to identify a responsible LEA. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063 (holding CDE responsible for providing special education services to a parentless child where the Orange County Juvenile Court had not appointed a legal guardian or responsible adult, and then-existing California law under the facts presented did not allow identification of a "parent" for purposes of determining residency and a responsible LEA).)

Education Code, sections 41320 et seq., provide for state emergency financial assistance to financially distressed school districts. Under certain conditions, and depending on the amount and type of assistance, the Superintendent of Public Instruction "shall assume all the legal rights, duties, and powers of the governing board of a qualifying school district. The Superintendent, in consultation with the county superintendent of schools, shall appoint an administrator to act on his or her behalf in exercising the authority described in this subdivision...." (Ed. Code, § 41326, subd. (b).)

On September 14, 2012, IUSD was granted state emergency financial assistance. (Stats. 2012, c. 325). In accordance with Education Code, section 41326, subdivision (b), the Legislature directed the Superintendent of Public Instruction to "assume all legal rights, duties, and powers of the governing board of the Inglewood Unified School District, and [to] appoint a state administrator, in consultation with the county superintendent of schools, to act on his or her behalf...." (Stats. 2012, c. 325, § 3.)

## DISCUSSION

CDE's Motion to Dismiss itself is denied. Under the emergency apportionment, IUSD's legal rights, duties and powers have been assumed by the state. CDE may ultimately be responsible for providing special education, by default, if it is impossible for the responsible LEA to provide a FAPE. Thus, under the facts presented CDE is a proper party to this due process matter. (See *Orange County Department of Education v. California Department of Education*, *supra*, 668 F.3d at p. 1063.)

CDE's Motion to Dismiss Mr. Torlakson, and IUSD's Motion to Dismiss Ms. Kirk-Carter, are both granted. Special education due process hearing procedures extend to parents, students and public agencies only. For the same reason, Student's "Notice of Substitution of Parties and Alternative Request for Leave to Amend and Motion to Amend" seeking to name an alternate individual instead of Ms. Kirk-Carter, is denied.

#### ORDER

1. Tom Torlakson is dismissed as a party.
2. La Tanya Kirk-Carter is dismissed as a party.
3. CDE's motion to be dismissed as a party is denied.
4. Student's Notice of Substitution of Parties and Alternative Request for Leave to Amend and Motion to Amend, seeking to name Dr. Donn Braun as a respondent, is denied.
5. The matter will proceed against IUSD and CDE only.

Dated: July 16, 2013

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings